

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 21.05.2010

+ **WP (C) 12714/2009**

DELHI DEVELOPMENT AUTHORITY

... Petitioner

- versus -

**CENTRAL INFORMATION COM MISSION
AND ANOTHER**

... Respondents

Advocates who appeared in this case:-

For the Petitioner	: Mr Ajay Verma
For the Respondent No.1	: Prof. K.K. Nigam
For the Respondent No.2	: Mr Sarabjit Roy (In person)

CORAM:-

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MS. JUSTICE VEENA BIRBAL**

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|---|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. To be referred to the Reporter or not ? | Yes |
| 3. Whether the judgment should be reported in Digest ? | Yes |

BADAR DURREZ AHMED, J

PREFACE

1. Information is power. This is truer now, in this information age, than ever before. In a democracy this power of information which the public authorities possess is to be shared with the people. But at the same time, not every piece of information is to be made public. There is the public interest and democratic purpose in dissemination of information on the one hand and the competing private rights and national interests in general non-disclosure,

on the other. This is recognized in the preamble to the Right to Information Act, 2005 (hereinafter referred to as 'the said Act') itself:-

“And whereas **democracy requires an informed citizenry and transparency of information** which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas **revelation of information in actual practice is likely to conflict with other public interests** including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas **it is necessary to harmonise these conflicting interests** while preserving the paramountcy of the democratic ideal”

(emphasis supplied)

Thus, the flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power. Under the said Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. As we shall see, this is a case where the Central Information Commission and the Chief Information Commissioner have travelled beyond their boundaries of power and have thereby transgressed the provisions of the very Act which created them.

The Facts:

2. The petitioner (Delhi Development Authority), by way of this writ petition under Article 226 of the Constitution of India, seeks the issuance of

a writ in the nature of certiorari quashing / setting aside the order dated 22.09.2009 passed by the Central Information Commission upon a complaint filed by the respondent No.2. The petitioner also seeks the quashing / setting aside of the Central Information Commission (Management) Regulations, 2007 (hereinafter referred to as 'the impugned Regulations') on the ground that they are *ultra vires* the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act'). In particular, the petitioner prays for the quashing of Chapter IV with specific emphasis on Regulation 20, which makes provision for the conduct of an inquiry. The petitioner is also aggrieved by the fact that the Central Information Commission required the presence of the Vice-Chairman of the Delhi Development Authority in the course of proceedings before it and the fact that the said Vice-Chairman could not be present was commented upon adversely by the Central Information Commission. The point taken by the petitioner is that the Central Information Commission does not have the plenary powers, which are vested in the High Courts and the Supreme Court of India and that, under the provisions of the RTI Act, the said Commission only has the power to summon and enforce the attendance of a person for the purposes of evidence. It was contended that the Commission does not have the power to direct the presence of the head of a public authority like the petitioner, especially when the concerned officers of such a public authority in the hierarchy under the RTI Act and senior officers have otherwise appeared before the Commission in deference to it. It was, therefore, contended that there was no power with the Commission to require the presence of the

Vice-Chairman of the petitioner and consequently, there was no occasion for the Commission to make any adverse observation in the impugned order merely because the Vice-Chairman of the petitioner could not appear for the hearing on 03.09.2009. In the impugned order dated 22.09.2009, the Central Information Commission made the following observations:-

“At the outset we are constrained to note adversely the absence of Vice Chairman, DDA who was specially invited on this occasion to help clarify the decision regarding compliance with the orders of this Commission.”

(underlining added)

3. The operative portion of the decision taken by the Commission on 22.09.2009 is as under:-

“Having heard the arguments and examined the records, we find the levels of compliance of the DDA both in letter & spirit of the RTI Act leaves much to be desired. It does not appear that close attention has been paid by the top management of this Authority to ensure a smooth transition to the transparency and accountability that is demanded by this law. Principal Commissioner cum Secretary, DDA Shri V.M. Bansal, although repeatedly asked to clarify various points at issue, solidly took recourse to the plea that whatever the Commission directs, the DDA will implement. He had no suggestions of what course may be followed either by internal inquiry or enquiry by professionals of the need to review the public disclosure policy of the DDA. This is a most unsatisfactory situation in a public authority, which should be in the forefront of transparency dealing with a mandate as vital as is assigned to the DDA. For this reason, this Commission in enquiring into the complaint of Dr. Sarabjit Roy is satisfied that there are grounds to enquire into the matter of compliance with sec 4 of the RTI Act by the DDA. To initiate this enquiry a Committee of the following is appointed, which will go into the details of servicing of the RTI Act by all wings and sections of the DDA and submit a report to this Commission within 45 working days of the date of receipt of this Decision Notice:

1. Ms Sujata Chaturvedi, Director MoUD
2. Shri Dunu Roy, Hazards Centre, Delhi

3. Shri Pankaj KP Shreyaskar Jt Registrar, CIC, Member Secretary”

(underlining added)

4. As aforesaid, the petitioner is aggrieved by the fact that the absence of the Vice-Chairman, DDA was commented upon adversely in the impugned order. The petitioner is also aggrieved by the fact that by virtue of the impugned order, the Commission has appointed a committee to inquire into the complaint of the respondent No.2 with regard to the matter of compliance by the DDA with the provisions of Section 4 of the RTI Act. According to the petitioner, there is no provision, which, under the RTI Act or the Rules made thereunder, empowers the Commission to appoint a committee, to inquire into the details of servicing of the RTI Act by all the wings and sections of the DDA and to thereafter submit a report to the Commission. The appointment of the said Committee (which includes Ms Sujata Chaturvedi, an official of the Ministry of Urban Development, Shri Dunu Roy, who represents an NGO, ‘Hazard Centre’, Delhi and Shri Pankaj KP Shreyaskar, who is the Joint Registrar of the Commission) is sought to be justified on the part of the counsel appearing on behalf of the Commission on the basis of Regulation 20 of the impugned Regulations. It is for this reason that the petitioner has impugned the regulations as being *ultra vires* the Act.

5. The impugned order dated 22.09.2009 is the result of a sequence of events which were set into motion by a complaint filed by the respondent No.2 sometime in 2005 under Section 18 read with Section 19 of the said

Act. The complaint was against the DDA and, in particular with regard to information concerning the ongoing modification of the Master Plan of Delhi for the year 2021 (MPD 2021). The respondent No.2 also sought directions to the DDA to fulfill its obligations under Section 4 of the RTI Act, which included pro-active disclosures. Initially, the respondent No.2 had claimed several reliefs, which included the providing of information sought, a direction to the DDA to deposit records with the Commission, appointment of a single Public Information Officer (PIO); re-designing of the application form; copies of 17 manuals be provided to the complainant; and payment of compensation. However, before us, the respondent No.2 submitted that his only surviving grievance is that the provisions of Section 4 of the RTI Act be complied with and the details be made available on the website of the Delhi Development Authority as expeditiously as possible. We are, therefore, focusing only on the aspect of compliance by the DDA with the provisions of Section 4 of the RTI Act.

6. On the said complaint made by the respondent No.2, the Commission passed an order on 25.02.2006, whereby the public information officer of the petitioner was, *inter alia*, directed to provide the Commission with a compliance report for the Commission's record with respect to the obligations under Section 4 of the RTI Act. It was also directed that the Acts and the Rules relevant to the functioning of the public authority (DDA) be published on the website as expeditiously as possible and, in any case, within 30 days.

7. Thereafter, on 12.08.2008, the respondent No.2 filed another complaint against the Secretary, Delhi Development Authority submitting that the orders of the Commission dated 25.02.2006 had not yet been complied with. It appears that prior to the consideration of this complaint dated 12.08.2008, the Commission, in another appeal (Appeal CIC/S/A/2008/00006) pertaining to the DDA, had passed an order on 09.02.2009 directing the Secretary, DDA to put the DDA Act and the Rules framed thereunder on the DDA's website. The respondent No.2's complaint dated 12.08.2008 was disposed of by the Commission by virtue of its order dated 01.06.2009. In this order, the Commission observed that the information contemplated under the provisions of Section 4(1)(b) of the RTI Act, insofar as it pertained to the Delhi Development Authority, was not available on the latter's website. In the said order, however, it was noted that the representative of the Delhi Development Authority had submitted that in accordance with the instructions of the Commission, the DDA Act had been uploaded on the DDA's website. This fact had also been conceded by the respondent No.2. But, he qualified his concession by stating that it had only been done recently and not in compliance with the orders of the Commission of 25.02.2006, which had required the said information to be placed on the website within 30 days. It is not in dispute that over 3600 pages of information had been uploaded on the website of the DDA. However, it was contended by the respondent No.2 that the same was not placed in an organized manner.

8. In the decision taken by the Commission on 01.06.2009, there is a reference to other decisions of the Commission dated 09.04.2009 and 17.03.2009 wherein, apparently, the Commission had dealt with the question of implementation of Section 4(1) of the RTI Act in detail. From the order dated 01.06.2009, it appears that detailed directions were given by the Commission in its decision of 09.04.2009 pertaining to the implementation of the provisions of Section 4(1) of the RTI Act. In the decision dated 09.04.2009, which was generally made with regard to public authorities, the Commission in purported exercise of powers conferred under Section 19(8)(a) required the public authorities to, *inter alia*, take the following steps:-

“XXXXX XXXXX XXXXX XXXXX XXXXX

- (i) Since a reasonable time has now passed from the time of promulgation of the Act in 2005, the Public Authorities should now take urgent steps to have their records converted to electronic form, catalogued, indexed and computerized for easy accessibility through the network all over the country, as mandated in Section 4(1)(a) of the Act. The computerization, dissemination and updating of record is an ongoing and continuous process and all Public Authorities should put a proper system in place to make such sharing of records as automatic, routine and continuous process, so that access to such records is facilitated.
- (ii) The Public Authorities are required to take immediate steps to publish detailed, complete and unambiguous information under the 16 categories, as on 31.3.2009 (if already not done or partially done) and thereafter update the information as and when necessary, but definitely every year, as mandated under section 4(1)(b) of the Act.
- (iii) While formulating important policies or announcing the decisions affecting the public, the Public Authorities are

required to publish all relevant facts about such policies and decisions for the information of public at large, as mandated under section 4(1)(c) of the Act.

- (iv) The information disclosed by the Public Authorities under section 4(1)(b) & (c) of the Act is required to be disseminated through multiple means as provided under sub sections 2, 3 and 4 of Section 4 of the Act

XXXXX XXXXX XXXXX XXXXX XXXXX

- (vii) The names, room numbers, telephone numbers, e-mail addresses of the CPIOs/ACPIOs and Appellate Authorities may be prominently displayed in each office for the convenience of the public at large. If the complete disclosures of 4(1)(b) & (c) are also available with any other officer(s) other than the CPIOs/ACPIOs, the names, designations, room numbers and telephone numbers of such officers must be prominently displayed in the offices for easy contactability.”

The Commission, after setting out the directions indicated above, which it had given in its decision of 09.04.2009, passed the following order:-

“In the light of the above Secretary DDA Shri Bansal is directed to ensure that the orders of this Commission of 25-2-2006 are complied with in full within 30 working days of the date of issue of this decision notice. It is noted that this is a repetition of an earlier order buttressed by subsequent elaboration in the Commission’s orders of 17-3-09 and 9-4-09. If the compliance is not complete by the end of the period now given by CPIO found to be in non-compliance will be liable for penalty under sub-Section 1 of Section 20 on the ground that furnishing the information in the manner directed has been obstructed by that CPIO.

To ensure that this is done, therefore, this Commission will hold a further hearing in this matter on 13th July, 2009 at 4.00 p.m. when all parties are directed to be present including Secretary, DDA Shri Bansal who is the coordinating authority for dissemination of information under the RTI Act so nominated by the DDA. The complaint is disposed of accordingly.”

9. As a follow-up on the order dated 01.06.2009, further proceedings were held before the Central Information Commission. One such proceeding was held on 23.07.2009, whereupon the decision was announced on 24.07.2009. In the said decision of 24.07.2009, the Central Information Commission observed that the petitioner (DDA), in an effort to demonstrate compliance to the Commission, had uploaded the information in a disorganized manner which was also admittedly incomplete thereby bringing in confusion instead of clarity into the system for providing access to information as required under Section 2(i) of the RTI Act. Based upon this premise, the Central Information Commission came to the following conclusion in its order dated 24.07.2009:-

“Under the circumstances, it will be necessary to launch a more detailed enquiry into the functioning of DDA in servicing the RTI Act. For this purpose, Vice Chairman, DDA Shri Ashok Kumar together with Principal Commissioner cum Secretary, DDA, will appear before us on 3rd Sept., 2009 at 11.00 a.m. to discuss the present situation and the requirement and scope of further enquiry to enable us to reach a constructive conclusion in this matter.”

(underlining added)

10. From the above decision, it is apparent that the Central Information Commission thought it fit to launch a detailed inquiry into the functioning of the DDA in servicing the RTI Act. For this purpose, the Commission directed the Vice-Chairman, DDA together with the Principal Commissioner-cum-Secretary, DDA to appear before the Commission on 03.09.2009. The expression used is – “will appear before us”. This expression has, in the impugned order, been referred to as a ‘special invitation’. But, the order dated 24.07.2009 from its tenor does not appear to

be an invitation, but a clear direction requiring the Vice-Chairman, DDA to appear before the Commission on the date indicated. According to the petitioner, issuance of such a direction was not within the powers of the Central Information Commission.

11. After the said order dated 24.07.2009, a hearing was held on 03.09.2009. The Vice-Chairman, DDA was not present. However, the Principal Commissioner-cum-Secretary, DDA was present alongwith other officials of the DDA. As mentioned above, the absence of the Vice-Chairman, DDA was taken adverse note of by the Central Information Commission and thereafter, the decision to appoint the three-member committee to go into the details of servicing of the RTI Act by all the wings and sections of the DDA and to submit a report to the Commission, was taken. These are, in brief, the facts of the case.

Three Questions:

12. In this writ petition, the following questions need to be determined:-

- (1) Whether the Central Information Commission has the power, under the RTI Act and the Rules made thereunder to appoint a committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, such as the DDA by virtue of Section 4 of the RTI Act ?
- (2) Whether the Chief Information Commissioner had the power to make the Central Information Commission (Management) Regulations, 2007 under Section 12(4) of

the RTI Act and particularly regulations with regard to the subject matter of Chapter IV thereof, namely, 'registration, abatement or return of the appeal' ?

- (3) Whether the Central Information Commission had the power to issue a direction requiring the presence of the Vice-Chairman, DDA in the proceedings before it ?

The answers to these questions are:- (1) No; (2) No; and (3) No. The reasons for the same are given below:-

Question No.1:

13. The answer to this question lies in examining the relevant provisions of the RTI Act. Section 4 of the said Act sets out the obligations of the public authorities. The same reads as under:-

- “4. Obligations of public authorities.—** (1) Every public authority shall—
- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
 - (b) publish within one hundred and twenty days from the enactment of this Act,—
 - (i) the particulars of its organisation, functions and duties;
 - (ii) the powers and duties of its officers and employees;
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
 - (iv) the norms set by it for the discharge of its functions;

- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed and thereafter update these publications every year;
- (xviii) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

- (xix) provide reasons for its administrative or quasi-judicial decisions to affected persons.
- (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.
- (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority."

14. Section 18 prescribes the powers and functions of the Central Information Commission and the State Information Commission. It reads as under:-

“18. Powers and functions of the Information Commission.— (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

- (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public

Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in subsection (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information

Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.”

15. Section 19 of the RTI Act deals with appeals. The same reads as under:-

“19. Appeal.—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

- (i) by providing access to information, if so requested, in a particular form;
- (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- (v) by enhancing the provision of training on the right to information for its officials;
- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.”

16. From the above, it is clear that certain obligations have been cast upon the public authorities by virtue of Section 4. In particular, Section 4(1)(b) requires every public authority to, within 120 days from the enactment of the Act, publish particulars of its organization, functions and duties; powers and duties of its officers and employees; procedures followed in the decision making process, including channels of supervision and accountability, etc. Section 4(1)(c) casts an obligation upon a public authority to publish all relevant facts while formulating important policies or announcing the decisions which affect the public. With regard to the provisions of Section 4(1)(c), it is specifically provided in sub-section (2) of Section 4 that it shall be a constant endeavour on the part of every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. Another salutary provision is that by virtue of Section 4(3), all such information is required to be disseminated widely and in such form and manner which is easily accessible to the public. Of course, Section 4(4) does provide that all such materials should be disseminated after taking into consideration the cost effectiveness, local language and the most effective method of communication. It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word “disseminate” has also been defined in the explanation to mean – making the information known or

communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information. To that extent, the Central Information Commission is correct in directing the petitioner (DDA) to carry out its obligations by publishing the information on its website. However, we are concerned with the larger issue of as to whether the Central Information Commission had the power to appoint “a third party committee” comprising of outsiders to conduct an inquiry into the servicing of the RTI Act. As we have seen, Section 4 merely sets out the obligations of the public authorities. It does not provide the machinery to enforce the implementation of these obligations.

17. Section 18, which has been set out above, deals with the powers and functions of the Central Information Commission as also the State Information Commission. Sub-section (1) stipulates that it shall be the duty of the Information Commission to receive and “inquire into” a complaint from any person where any of the conditions mentioned in clauses (a) to (f) are satisfied. Sub-section (2) of Section 18 stipulates that the Information

Commission, if it is satisfied that there are reasonable grounds to inquire into the matter, may initiate an “inquiry” in respect thereof. Sub-section (3) of Section 18 provides that the Information Commission shall, “while inquiring into” any matter under Section 18, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the matters specified in the said provision which, *inter alia*, includes summoning and enforcing the attendance of the persons and compelling them to give oral or written evidence on oath or to produce the documents or things, etc. Section 18(4) empowers the Information Commission to examine any record to which the RTI Act applies, which is under the control of the public authority, during the “inquiry” of any complaint under the said Act. It also stipulates that no such record may be withheld from the Commission on any grounds. It is apparent that all the sub-sections of Section 18 refer to the powers of the Information Commission to inquire into a complaint. Section 18(2) deals with the initiation of inquiry by the Information Commission. Section 18(3) spells out the powers of the Information Commission while conducting such an inquiry and Section 18(4) empowers the Information Commission to examine any record to which the RTI Act applies during the course of inquiry by the Information Commission. It is apparent from all these provisions that the inquiry that is contemplated under Section 18 is an inquiry by the Information Commission itself. There is no provision for an inquiry to be conducted by any other ‘committee’ for and on behalf of the Information Commission.

18. Insofar as the provisions of Section 19, which pertain to appeals, are concerned, the Central Information Commission or the State Information Commission in its decision in an appeal, has the power to, *inter alia*, require the public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act which obviously includes the provisions of Section 4 which spells out the obligations of the public authorities. Section 19(8)(a)(vi) clearly indicates that the information Commission has the power to require a public authority to provide the Information Commission with an annual report in compliance with clause (b) of sub-section (1) of Section 4. There is nothing in Section 19 which empowers an Information Commission, be it the Central or the State Commission, to constitute any committee to initiate or conduct any inquiry for and on its behalf.

19. It is clear that there is no provision under the RTI Act which empowers the Central Information Commission or, for that matter, the State Information Commission, to appoint a committee for conducting an inquiry for and on its behalf. The power of inquiry under Section 18, which has been given to the Central and the State Information Commissions is confined to an inquiry by the concerned Information Commission itself. There can be no delegation of this power to any other committee or person. “*Delegatus non potest delegare*” is a well-known maxim which means – in the absence of any power, a delegate cannot sub-delegate its power to another person (See: **Pramod K. Pankaj v. State of Bihar & Others: 2004 (3) SCC 723**).

20. As we have seen, there is nothing in the Act which empowers the Central Information Commission to appoint a committee to conduct an inquiry on its behalf, the only rules that have been framed under Section 27 of the RTI Act, are the following:-

- i) The Right to Information (Regulation of Fee and Cost) Rules, 2005; and
- ii) The Central Information Commission (Appeal Procedure) Rules, 2005.

None of these rules deal with the powers of inquiry of the Central Information Commission. Therefore, there is nothing prescribed either in the Act or the Rules made thereunder, whereby the Central Information Commission could be said to have been empowered to delegate its power of inquiry under Section 18 to some other person or a committee of persons.

21. Consequently, this question has to be answered in the negative. The Central Information Commission did not have the power to appoint the committee that it did by virtue of its order dated 22.09.2009 and, therefore, to this extent, the impugned order is liable to be set aside and it is so set aside.

Question No.2:

22. The learned counsel appearing on behalf of the Central Information Commission sought to justify the order dated 22.09.2009 with regard to the formation of a committee for the purposes of conducting an inquiry on the strength of the impugned Regulations. In particular, he referred to Regulation 20 of the impugned Regulations, which reads under:-

“20. Conduct of an enquiry.— The Commission may entrust an enquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the enquiry shall have all the necessary powers including power to—

- (i) summon and enforce attendance of persons;
- (ii) compel production of documents or things;
- (iii) administer oath and to take oral evidence or to receive affidavits or written evidence on solemn affirmation;
- (iv) inspect documents and require discovery of documents; and
- (v) requisition any public record or documents from any public authority.”

23. A plain reading of the said Regulation 20 indicates that the Commission may entrust an inquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the inquiry shall have all the necessary powers, including summoning and enforcing the attendance of persons, etc. It is apparent, straightway, that the powers which have been given to the Commission under the RTI Act have been sought to be delegated to the Registrar or any other officer, who may be appointed for the purpose of conducting an inquiry. This is clearly impermissible. It is beyond what has been provided in the Act. There is no question of the Central Information Commission entrusting an inquiry to the Registrar or to anybody else. This would be in clear and gross violation of the provisions of the RTI Act. It would also amount to an abdication by the Commission of the duties specifically cast upon it by the statute. Regulation 20 is, therefore, clearly *ultra vires* the provisions of the RTI Act and is liable to be set aside.

24. Apart from this, there also arises the larger issue as to whether the impugned Regulations could, at all have been made by the Chief Information Commissioner. The impugned Regulations have purportedly been made in exercise of the powers conferred under Section 12(4) of the RTI Act. The impugned Regulations purport to be regulations for the management of the ‘affairs’ of the Central Information Commission so as to enable it to function effectively. However, we may observe, at the outset, that the regulations go far beyond the general superintendence, direction and management of the affairs of the Central Information Commission, which is provided for under Section 12(4) of the RTI Act. Section 12 (4) of the RTI Act reads as under:-

“12. Constitution of Central Information Commission.—

(1) xxxxx xxxxx xxxxx xxxxx

(2) xxxxx xxxxx xxxxx xxxxx

(3) xxxxx xxxxx xxxxx xxxxx

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) xxxxx xxxxx xxxxx xxxxx

(6) xxxxx xxxxx xxxxx xxxxx

(7) xxxxx xxxxx xxxxx xxxxx”

25. We note that there is a similar provision in respect of the State Information Commissions, namely, Section 15(4). Section 12(4) merely indicates that the general superintendence, direction and management of the

affairs of the Central Information Commission vests in the Chief Information Commissioner, who shall be assisted by the Information Commissioners. This power, which vests in the Chief Information Commissioner, is only limited to the affairs of the Central Information Commission and does not extend to the substantive provisions of the RTI Act. No power whatsoever has been given to the Chief Information Commissioner to impinge upon or add to or subtract from the powers and functions of the Central Information Commission as stipulated in Section 18 of the RTI Act. The Chief Information Commissioner could, arguably, prescribe regulations concerning its own internal management affairs. He cannot promulgate or prescribe any regulations which impinge on the substantive or procedural provisions stipulated under the RTI Act and the Rules competently framed thereunder. The Chief Information Commissioner is a creature of the statute and unless the statute creating him invests him with a specific power, he cannot claim to exercise such power. The RTI Act does not confer any power upon the Chief Information Commission to make any regulations and much less regulations encroaching upon the subject matter of the rule making power of the 'appropriate' government under Section 27.

26. Before we go on to examine the provisions of Section 27 and 28 of the RTI, which deal with the rule making powers of the 'appropriate government' and 'competent authority', it would be appropriate to notice the observations of the Supreme Court in respect of powers of the National

Human Rights Commission in the case of *N.C. Dhoundial v. Union of India and Ors.*: (2004) 2 SCC 579 (at page 586):-

“14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act.”

(underlining added)

27. A Constitution Bench of the Supreme Court in *Naraindas Indurkha v. State of M.P.*: 1974 (4) SCC 788, considered the rival claims of the Board of Secondary Education and the State Government, under the provisions of the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965, to the power to prescribe text books. The said Board was constituted under section 3 of the said Act and section 8 defined its powers which, inter alia, included the power to prescribe courses of instruction in such branches of Secondary Education as it may think fit. In this backdrop, the Supreme Court held that the Board did not have the power to prescribe text books and, therefore, the Notification issued by the Board ‘prescribing’ text books was held to be ineffectual. The Supreme Court’s observations were, inter alia, as follows:-

“13. It is elementary that the Board is a creature of the statute and unless the statute creating it invests it with power to

prescribe text books so as to make it obligatory on the schools to adopt such text books and no others for study and teaching, it cannot claim to exercise such power. The Board also cannot, in the absence of power expressly or by necessary implication conferred on it by the Statute, make it a condition of recognition of the schools that they shall follow only the text books prescribed by it and no other text books shall be used by them for study and teaching. The Act of 1965 under which the Board is created does not in express terms give power to the Board to prescribe text books, nor does it provide anywhere that the Board shall be entitled to make it a condition of recognition that the schools shall use the text books prescribed by it and no others.”

XXXX XXXX XXXX XXXX

“It is only the State Government and not the Board, which is given power under Section 4, Sub-section (1) to prescribe text books, and therefore, the notification dated 28th March, 1973, which was issued by the Board and not by the State Government, was futile and ineffectual and did not have the effect of prescribing these text books under Section 4, Sub-section (1). These text books could not, therefore, be regarded as text books prescribed under Sub-section (1) or referred to in Sub-section (2) of Section 4 and in the circumstances there was no obligation on the approved and recognised schools to use only these text books and no others undo Sub-section (3) of Section 4.”

(underlining added)

28. Sections 27 and 28 deal with the rule making powers of the appropriate Government and the competent authority, respectively. The expression “appropriate government” has been defined in Section 2(a) as under:-

“2. Definitions.— In this Act, unless the context otherwise requires, —

- (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
 - (i) by the Central Government or the Union territory administration, the Central Government;

- (ii) by the State Government, the State Government;
 XXXXX XXXXX XXXXX XXXXX"

Similarly, the expression "competent authority" has been defined in Section 2(e) as under:-

"2. Definitions.— In this Act, unless the context otherwise requires, —

XXXXX XXXXX XXXXX XXXXX

- (e) "competent authority" means —
- (i) the Speaker in the case of the House of the people or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
 - (ii) the Chief Justice of India in the case of the Supreme Court;
 - (iii) the Chief Justice of the High Court in the case of a High Court;
 - (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
 - (v) the administrator appointed under article 239 of the Constitution;

XXXXX XXXXX XXXXX XXXXX"

29. The Chief Information Commissioner does not fall within the definition of "appropriate Government" or the "competent authority". In other words, the Chief Information Commissioner has no powers to make rules under Section 27 or Section 28. Both the "appropriate government" and the "competent authority" have been empowered by the said Rules to make rules to carry out the provisions of the RTI Act. However, such rules would only be operative if they are notified in the official gazette.

30. In *Sukhdev Singh and Others v. Bhagatram Sardar Singh Raghuvanshi and Anotehr*: 1975 (1) SCC 421, a Constitution Bench of the Supreme Court held that ‘[r]ules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in ‘delegated legislation’. In this context, the Supreme Court observed:-

“15. The words “rules” and “regulations” are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires...”

“18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. ... These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute.”

“21. The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.”

“24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power....”

(underlining added)

In this case, the ostensible source of power for framing the said Regulations is indicated to be section 12(4) of the RTI Act. But, that provision only relates to the superintendence, direction and management of the affairs of the Central Information Commission. Section 12(4) cannot be regarded as the fountain-head of the power to make ‘regulations’ whether expressly or by implication. The scope and ambit of Section 12(4) is limited to the management of the affairs of the Central Information Commission. The words superintendence, direction and management are all used in a synonymous sense and concerns the internal affairs of the Commission. The power which vests in the Chief Information Commissioner by virtue of Section 12(4) does not extend to the subject matter of the rule making powers of the ‘appropriate government’ or the ‘competent authority’ under Sections 27 and 28, respectively.

31. With regard to the impugned Regulations, we may also observe that, first of all, there is no power prescribed under the Act to make any regulations. Secondly, even if the said regulations were to be construed as Rules, the Chief Information Commissioner does not have the power to make rules because he is neither the “appropriate government” nor is he the “competent authority”. Thirdly, even if it were assumed, and merely as an

extreme conjecture, that he did have the power to make such ‘rules’ in the guise of ‘regulations’, the same have not, in any event, been notified in the official gazette. Fourthly, nor have they been laid down before the House of Parliament as provided under Section 29. Consequently, the ‘regulations’ framed by the Chief Information Commissioner cannot be regarded as having any legal sanctity or validity. Therefore, no reliance whatsoever can be placed on the said Regulation 20 in order to justify the order dated 22.09.2009, whereby the Central Information Commission has constituted a committee to inquire into the workings of Section 4 insofar as the petitioner (DDA) is concerned.

32. We would also like to point out that Section 27, which empowers the appropriate government to make rules to carry out the provisions of this Act, specifically speaks of the power to make rules with regard to the procedure to be adopted by the Central Information Commission or the State Information Commission, as the case may be, in deciding an appeal under sub-section (10) of Section 19 of the RTI Act. This power is particularly spelt out in Section 27(2)(e) of the said Act. In exercise of this power, the Central Government, being the “appropriate government” has, in fact, framed the rules – The Central Information Commission (Appeal Procedure) Rules, 2005. But, we find that the Chief Information Commissioner, who has arrogated to himself the power to do anything under the guise of the provisions of Section 12(4) of the said Act, has formulated the impugned Regulations which also specifically provide for ‘the registration, abatement

or return of appeals’ in Chapter IV of the impugned Regulations. The procedure prescribed under the regulations, if compared with the appeal procedure prescribed under the Central Information Commission (Appeal Procedure Rules) 2005, would reveal that the same are at variance. The following comparative table demonstrates this variance:-

Comparison between the Central Information Commission (Appeal Procedure) Rules 2005 and the Impugned Central Information Commission (Management) Regulations 2007

Central Information Commission (Appeal Procedure) Rules 2005	The Central Information Commission (Management) Regulations 2007
<p>In exercise of the powers conferred by <u>clauses (e) and (f) of sub-section (2) of section 27</u> of the Right to Information Act, 2005 (22 of 2005), the <u>Central Government</u> hereby makes the following rules, namely:-</p> <p>1. Short Title and commencement. - (1) These rules may be called the <u>Central Information Commission (Appeal Procedure) Rules, 2005.</u></p> <p>(2) <u>They shall come into force on the date of their publication in the Official Gazette.</u>¹</p>	<p>In exercise of the powers conferred by <u>section 12(4)</u> of the Right to Information Act, 2005 (Act 22 of 2005) and all other provisions in the Act enabling in this behalf, the <u>Chief Information Commissioner</u> hereby makes the following Regulations for management of the affairs of the Central Information Commission so as to enable it to function effectively.</p> <p>Chapter-1: Short Title and Commencement:-</p> <p>(i) These Regulations may be called “the <u>Central Information Commission (Management) Regulations, 2007</u>”.</p> <p>(ii) <u>They shall come into force with effect from such date as the Chief Information Commissioner may by order specify.</u>²</p>

¹ 28th October, 2005

² 21st June, 2007

	<p>(iii) <u>Appeals and Complaints which have already been filed before the date of commencement of these Regulations and have been found in order and are already registered before this date will be proceeded with as before and shall not abate for any infirmity therein but these regulations will be applicable for any prospective action even in regard to such pending appeals and complaints.</u></p>
<p>No such provision has been made under these Rules.</p>	<p>CHAPTER – IV: Registration, Abatement or Return of Appeal.</p> <p>7. Appeal or complaint etc. to be in writing:- Every appeal, complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly and in double line spacing and the language used therein shall be formal and civilized and should not be in any way indecent or abusive. The appeal, complaint or an application shall be presented in at least two sets in a paper-book form.</p>
<p>3. Contents of appeal.- An appeal to the Commission shall contain the following information, namely.-</p> <p>(i) name and address of the appellant ;</p> <p>(ii) name and address of the Central Public Information Officer against the decision of whom the appeal is preferred.</p> <p>(iii) particulars of the order including number, if any, against which the appeal is preferred ;</p> <p>(iv) brief facts leading to the appeal ;</p> <p>(v) If the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was made;</p> <p>(vi) prayer or relief sought;</p>	<p>8. Contents of appeal or complaint:- (1) An appeal or a complaint to the Commission shall contain the following information, namely:-</p> <p>(i) name, address and other particulars of the appellant or complainant, as the case may be;</p> <p>(ii) name and address of the Central Public Information Officer (CPIO) or the Central Assistant Public Information Officer (CAPIO) against whom a complaint is made under Section 18 of the Act, and the name and address of the First Appellate Authority before whom the first appeal was preferred under Section 19(1) of the Act.</p> <p>(iii) particulars of the decision or order, if any, including its number and the date it was pronounced, against which the appeal is preferred;</p> <p>(iv) brief facts leading to the appeal or the complaint;</p> <p>(v) if the appeal or complaint is preferred</p>

<p>(vii) grounds for the prayer or relief;</p> <p>(viii) verification by the appellant; and</p> <p>(ix) any other information which the Commission may deem necessary for deciding the appeal.</p>	<p>against refusal or deemed refusal of the information, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was made and name and address of the First Appellate Authority before whom the appeal was filed;</p> <p>(vi) prayer or relief sought;</p> <p>(vii) grounds for the prayer or relief;</p> <p>(viii) verification by the appellant or the complainant, as the case may be; and</p> <p>(ix) any other information which may be deemed as necessary and helpful for the Commission to decide the appeal or complaint.</p> <p>(2) The contents of the complaint shall be in the same form as prescribed for the appeal with such changes as may be deemed necessary or appropriate.</p>
<p>4. Documents to accompany appeal. - Every appeal made to the Commission shall be accompanied by the following documents, namely.</p> <p>(i) self-attested copies of the orders or documents against which the appeal is being preferred ;</p> <p>ii) copies of documents relied upon by the appellant and referred to in the appeal ; and</p> <p>(iii) an index of the documents referred to in the appeal.</p>	<p>9. Documents to accompany appeal or complaint:- Every appeal or complaint made to the Commission shall be accompanied by self attested copies/photo copies of the following documents, namely:-</p> <p>(i) The RTI application submitted before the CPIO along with documentary proof as regards payment of fee under the RTI Act;</p> <p>(ii) The order, or decision or response, if any, from the CPIO to whom the application under the RTI Act was submitted.</p> <p>(iii) The First appeal submitted before the First Appellate Authority with documentary proof of filing the First Appeal.</p> <p>(iv) The Orders or decision or response, if any, from the First Appellate Authority against which the appeal or complaint is being preferred;</p> <p>(v) The documents relied upon and referred</p>

	<p>to in the appeal or complaint;</p> <p>(vi) A certificate stating that the matters under appeal or complaint have not been previously filed, or are pending, with any court or tribunal</p> <p>or with any other authority;</p> <p>(vii) An index of the documents referred to in the appeal or complaint; and</p> <p>(viii) A list of dates briefly indicating in chronological order the progress of the matter up to the date of filing the appeal or complaint to be placed at the top of all the documents filed.</p>
No such provision has been made under these Rules.	<p>10. Service of copies of Appeal/Complaint</p> <p>Before submitting an appeal or complaint to the Commission, the appellant or the complainant shall cause a copy of the appeal or complaint, as the case may be, to be served on the CPIO/PIO and the Appellate Authorities and shall submit a proof of such service to the Commission.</p> <p>Provided that if a complainant does not know the name, address and other particulars of the CPIO or of the First Appellate Authority and if he approaches the Commission under Section 18 of the Act, he shall cause a copy of his complaint petition to be served on the concerned Public Authority or the Head of the Office and proof of such service shall be annexed along with the complaint petition.</p>
No such provision has been made under these Rules.	<p>11. Presentation and scrutiny of appeal or complaint:-</p> <p>(i) The Registrar shall receive any appeal or complaint petition addressed to the Commission and ensure that</p> <p>(a) the appeal or the complaint, as the case may be, is submitted in prescribed format;</p> <p>(b) that all its contents are duly verified by the appellant or the complainant, as the case may be;</p>

	<p>(c) that the appeal or the complaint is in accordance with the Regulations.</p> <p>(ii) The Registrar shall also ensure that the appeal or the complaint petition contains copies of all required documents such as:</p> <p>(i) RTI application</p> <p>(ii) Receipt of the RTI Application</p> <p>(iii) Proof in regard to payment of fee/cost, if any;</p> <p>(iv) Decision/reply etc. from the CPIO, if any;</p> <p>(v) Appeal to the 1st Appellate Authority;</p> <p>(vi) Decision of the 1st Appellate Authority, if any.</p> <p>(iii) The Registrar shall scrutinize every appeal/complaint received and will ensure —</p> <p>(a) that the appeal or the complaint petition is duly verified and required number of copies are submitted;</p> <p>(b) That all the documents annexed are duly paginated and attested by the appellant or the complainant.</p> <p>(c) That the copies of the documents filed and submitted are clear, distinct and legible;</p> <p>(iv) That the Registrar will return any such appeal or the complaint if it does not meet the requirement or conform to the standard as set out above and permit its resubmission in proper form.</p> <p>(v) The Registrar may reject any such appeal or complaint petition —</p> <p>(a) if it is time-barred; or</p> <p>(b) if it is otherwise inadmissible; or</p>
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	<p>(c) if it is not in accordance with these Regulations.</p> <p>Provided that no such appeal or complaint petition shall be rejected by the Registry unless the concerned appellant or the complainant is given an opportunity of being heard. The decision of the Registrar in regard to the issue of maintainability of an appeal or a complaint shall be final.</p> <p>(vi) All appeals and Complaints not rejected or returned as above and found in order shall be registered and a specific number will be allocated.</p> <p>(vii) The Registrar or any other officer authorized by the Commission shall endorse on every appeal or complaint the date on which it is presented.</p> <p>(viii) The appeals and complaints shall bear separate serial numbers so that they can be easily identified under separate heads.</p> <p>(ix) If any appeal or complaint is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant or complainant to rectify the same in his presence or may allow two weeks time to rectify the defect. If the appeal or complaint has been received by post and found to be defective, the Registrar may communicate the defect(s) to the appellant or complainant and allow him two weeks time from the date of receipt of communication from the Registrar to rectify the defects.</p> <p>(x) If the appellant or complainant fails to rectify the defects within the time allowed in clause (ix) above, the appeal or complaint shall be deemed to have been withdrawn.</p> <p>(xi) An appeal or complaint which is not in order and is found to be defective or is not as per prescribed format is liable to be rejected.</p> <p>Provided that the Registrar may, at his discretion, allow an appellant or complainant to file a fresh appeal or complaint in proper form.</p>
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<p>No such provision has been made under these Rules.</p>	<p>12. Filing of Counter Statement by the Central Public Information Officer or the First Appellate Authority:- After receipt of a copy of the appeal or complaint, the Central Public Information Officer or the First Appellate Authority or the Public Authority shall file counter statement along with documents, if any, pertaining to the case. A copy of the counter statement(s) so filed shall be served to the appellant or complainant by the CPIO, the First Appellate Authority or the Public Authority, as the case may be.</p>
<p>No such provision has been made under these Rules.</p>	<p>13. Posting of appeal or complaint before the Information Commissioner:-</p> <p>(i) An appeal or a complaint, or a class or categories of appeals or complaints, shall be heard either by a Single Information Commissioner or a Division Bench of two Information Commissioners, or a Full Bench of three or more Information Commissioners, as decided by the Chief Information Commissioner by a special or general order issued for this purpose from time to time.</p> <p>(ii) Where in the course of the hearing of an appeal or complaint or other proceeding before a Single Information Commissioner, the Commissioner considers that the matter should be dealt with by a Division or Full Bench, he shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter.</p> <p>(iii) Similarly, where during the course of the hearing of a matter before a Division Bench, the Bench considers that the matter should be dealt with by a Full Bench, or where a Full Bench considers that a matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter.</p>
<p>No such provision has been made under these Rules.</p>	<p>14. Amendment or withdrawal of an Appeal or Complaint: The Commission may in its discretion allow a prayer for any amendment or withdrawal of an appeal or complaint during the course of its hearing if such a prayer is made by the appellant or</p>

	complainant on an application made in writing. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.
<p>5. Procedure in deciding appeal.- In deciding the appeal the Commission may.-</p> <p>(i) hear oral or written evidence on oath or on affidavit from concerned or interested person ;</p> <p>(ii) peruse or inspect documents, public records or copies thereof ;</p> <p>(iii) inquire through authorised officer further details or facts ;</p> <p>(iv) hear Central Public Information Officer, Central Assistant Public Information Officer or such Senior Officer who decided the first appeal, or such person against whom the complaint is made, as the case may be ;</p> <p>(v) hear third party ; and</p> <p>(vi) receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, such Senior Officer who decide the first appeal, such person against whom the complaint lies or the third party.</p>	<p>18. Evidence before the Commission:</p> <p>In deciding an appeal or a complaint, the Commission may:-</p> <p>(i) receive oral or written evidence on oath or on affidavit from concerned person or persons;</p> <p>(ii) peruse or inspect documents, public records or copies thereof;</p> <p>(iii) inquire through authorized officer further details or facts;</p> <p>(iv) examine or hear in person or receive evidence on affidavit from Central Public Information Officer, Central assistant Public Information Officer or such Senior Officer who decided the first appeal or such person or persons against whom the complaint is made as the case may be; or</p> <p>(v) examine or hear or receive evidence on affidavit from a third party, or an intervener or any other person or persons, whose evidence is considered necessary or relevant.</p>
<p>6. Service of notice by Commission.- Notice to be issued by the Commission may be served in any of the following modes, namely.-</p> <p>(i) service by the party itself ;</p> <p>(ii) by hand delivery (dasti) through Process Server ;</p> <p>(iii) by registered post with acknowledgment due ; or</p>	<p>No such provision has been made under these Regulations.</p>

(iv) through Head of Office or Department.	
<p>7. Personal presence of the appellant or complainant. - (1) The appellant or the complainant, as the case may be, shall in every case be informed of the date of hearing at least seven clear days before that date.</p> <p>(2) The appellant or the complainant, as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorised representative or may opt not to be present.</p> <p>(3) Where the Commission is satisfied that the circumstances exist due to which the appellant or the complainant, as the case may be, is being prevented from attending the hearing of the Commission, then, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.</p> <p>(4) The appellant or the complainant, as the case may be, may seek the assistance of any person in the process of the appeal while presenting his points and the person representing him may not be a legal practitioner.</p>	<p>15. Personal presence of the appellant or complainant:- (i) The appellant or the complainant, as the case may be, shall be informed of the date of hearing at least seven clear days before that date.</p> <p>(ii) The appellant or the complainant, as the case may be, may at his discretion be present in person or through his duly authorized representative at the time of hearing of the appeal or complaint by the Commission, or may opt not to be present.</p> <p>(iii) Where the Commission is satisfied that circumstances exist due to which the appellant or the complainant is being prevented from attending the hearing of the Commission, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.</p> <p>(iv) The appellant or the complainant, as the case may be, may seek the assistance of any person while presenting his case before the Commission and the person representing him may not be a legal practitioner.</p> <p>(v) If an appellant or complainant at his discretion decides not to be present either personally or through his duly authorized representative during the hearing of an appeal or complaint before the Commission, the Commission may pronounce its decision or order in the matter <i>ex parte</i>.</p>
No such provision has been made under these Rules.	<p>16. Date of hearing to be notified:- The Commission shall notify the parties the date and place of hearing of the appeal or complaint in such manner as the Chief Information Commissioner may by general or special order direct.</p>
<p>8. Order of the Commission. - Order of the Commission shall be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorised by the</p>	<p>22. Communication of decisions and Orders:-</p> <p>(i) Every decision or order of the Commission shall be signed and dated by the</p>

Commission for this purpose.	<p>Commissioner or Commissioners who have heard the appeal or the complaint or have decided the matter.</p> <p>(ii) Every decision/order of the Commission may either be pronounced in one of the sittings of the Commission, or may be placed on its website, or may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard.</p> <p>(iii) Every such decision or order, whenever pronounced by a Single Information Commissioner or by a Division Bench or by a Full Bench of three or more Information Commissioners, shall be deemed to be the decision or order by the Commission under the Act.</p>
No such provision has been made under these Rules.	<p>17. Adjournment of Hearing:- The appellant or the complainant or any of the respondents may, for just and sufficient reasons, make an application for adjournment of the hearing. The Commission may consider the said application and pass such orders as it deems fit.</p>
No such provision has been made under these Rules.	<p>19. Issue of summons:- Summons to the parties or to the witnesses for appearance or for production of documents or records or things shall be issued by the Registrar under the authority of the Commission, and it shall be in such form as may be prescribed by the Commission.</p>
No such provision has been made under these Rules.	<p>20. Conduct of an enquiry:- The Commission may entrust an enquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the enquiry shall have all the necessary powers including power to —</p> <p>(i) summon and enforce attendance of persons;</p> <p>(ii) compel production of documents or things;</p>

	<p>(iii) administer oath and to take oral evidence or to receive affidavits or written evidence on solemn affirmation;</p> <p>(iv) inspect documents and require discovery of documents; and</p> <p>(v) requisition any public record or documents from any public authority.</p>
No such provision has been made under these Rules.	<p>21. Award of costs by the Commission:- The Commission may award such costs or compensation to the parties as it deems fit having regard to the facts and circumstances of the case.</p>
No such provision has been made under these Rules.	<p>23. Finality of Decision:- (1) A decision or an order once pronounced by the Commission shall be final</p> <p>(2) An appellant or a complainant or a respondent may, however, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request;</p> <p>(3) The Chief Information Commissioner, on receipt of such a request, may consider and decide the matter as he thinks fit.</p>
No such provision has been made under these Rules.	<p>24. Abatement of an Appeal/Complaint:- The proceedings pending before the Commission shall abate on the death of the appellant or complainant.</p>

33. So, it appears that the Chief Information Commissioner has sought to overwrite not only the statutory provisions, but also the statutory rules. This

is clearly impermissible. From the above table, it can be seen that by virtue of Regulation 21, the Commission has purportedly been given the power to award such costs or compensation to the parties as it deems fit having regard to the facts and circumstances of the case. Such a power is not provided in the RTI Act. Section 19(8) specifically stipulates that in its decision, the Central Information Commission or the State Information Commission, as the case may be, has the power to (a) require the public authority to take any steps such as may be necessary to secure compliance with the provisions of the RTI Act; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under the RTI Act; (d) reject the application. Thus, by virtue of the said provision, the Central Information Commission has the power to require a public authority to compensate the complainant for “any loss or other detriment suffered”. In other words, the compensation has to be linked to the loss or other detriment which is suffered by the complainant. But, by virtue of Regulation 21, the Commission is sought to be empowered to award costs or compensation to the “parties” as it “deems fit” having regard to the facts and circumstances of the case. Thus, while the RTI Act makes a specific stipulation that the Central Information Commission has the power to award compensation to the complainant and that such power is to be exercised in the event of any loss or other detriment which is suffered by the complainant, by virtue of Regulation 21, the Information Commission is supposedly empowered to not only award costs in addition to compensation, but to either of the parties (not limited to the complainant) and for whatever

reason it “deems fit” without there being any nexus with the loss or other detriment actually suffered by the complainant. Clearly, Regulation 21 is out of line with the specific power given by the RTI Act in respect of compensation.

34. Another instance of the regulations exceeding the limits of power prescribed under the RTI Act and the Rules is to be found in Regulation 22. Rule 8 of the Central Information Commission (Appeal Procedure) Rules, 2005 (hereinafter referred to as ‘the said Rules’) clearly stipulates that the order of the Central Information Commission shall be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose. However, Regulation 22 is at variance with this rule. It provides that every decision / order of the Central Information Commission may either be pronounced in one of the sittings of the Commission or may be placed on its website or may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard. Clearly, regulation 22 permits something which has not been permitted by the statute or the rules made thereunder. The orders of the Central Information Commission are to be pronounced in open proceedings under the statutory rules, but the regulations seek to alter that position by permitting not only pronouncement in one of the sittings, but also by simply placing orders on the website or communication to the parties. Regulation 22 contains another provision which treats an order pronounced by a “single” Information

Commissioner or by a “Division Bench” (two Commissioners) or by a “Full Bench” of three or more Information Commissioners as the decision or order of the Central Information Commission under the Act. There is no such prescription under the RTI Act or the rules validly made thereunder which provides for such ‘Benches’ of the Central Information Commission.

35. Yet another instance of the complete transgression of the statutory powers is to be found in Regulation 23. The said regulation, inter alia, provides that an appellant or a complainant or a respondent may, notwithstanding that the decision or order of the Commission is final, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request. It further seeks to empower the Chief Information Commissioner, to consider and decide such a request as he thinks fit. Neither the RTI Act nor the rules framed thereunder grant the power of review to the Central Information Commission or the Chief Information Commissioner. Once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review or even of a special leave to appeal. Clearly, the said regulation is beyond the contemplation of the Act. Such a regulation is *ultra vires* the provisions of the Act.

36. We would also like to re-iterate the provisions of Section 19(10) of the RTI Act. Section 19, as we have mentioned earlier, deals with appeals. Sub-section (10) of Section 19 clearly stipulates that the Central Information

Commission or the State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure “as may be prescribed”. The word ‘prescribed’ is defined in Section 2(g) of the RTI Act to mean prescribed by the rules made under the RTI Act by the appropriate Government or the competent authority, as the case may be. It has no reference to any regulations made or to be made by the Chief Information Commissioner. Thus, the mandate of the Act is that the Central Information Commission shall decide the appeal in accordance with the rules made under the said Act by the appropriate Government or the competent authority, as the case may be and not otherwise. The Central Information Commissioner by formulating the regulations and prescribing the procedure for deciding appeals, has clearly violated these provisions of the RTI Act.

37. From the above, it can be seen that the regulations have been framed by the Chief Information Commissioner in complete derogation of the provisions of the RTI Act. He had no power to frame the regulations, particularly those contained in Chapter IV. Consequently, this question is also answered in the negative.

Question No.3:

38. Section 18(3) of the said Act, which we have already set out above, empowers the Information Commission, while inquiring into any matter under the said Section, to have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters:-

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

39. There is no doubt that while the Central Information Commission is conducting an inquiry into a matter under Section 18 of the said Act, it has the powers to summon and enforce the attendance of persons and compel them to give written or oral evidence on oath and to produce the documents or things. But, it is only for the purposes of giving evidence and to produce documents or things that a person may be summoned by the Central Information Commission. This power of summoning for the purposes of evidence cannot be read as a general power to call any person for any purpose in the course of hearing before the Central Information Commission. In the present case, the Vice-Chairman, DDA was not summoned for either giving oral evidence or written evidence or to produce any documents or things in his possession. He was directed to be present for other reasons. That power is not there with the Central Information Commission. Such a power only exists in courts of plenary jurisdiction. The Central Information Commission is not a court and certainly not a body

which exercises plenary jurisdiction. The Central Information Commission is a creature of the statute and its powers and functions are circumscribed by the statute. It does not exercise any power outside the statute. There is no power given by the statute to the Central Information Commission to call any person or compel any person to be present in a hearing before it in the proceedings under the Act, except for the purposes of giving evidence – oral or written or for producing any documents or things. Thus, no adverse inference could have been drawn for the absence of the Vice-Chairman, DDA in the proceedings held on 03.09.2009. This question is also answered in the negative.

Reliefs:

40. In view of the answers to the questions formulated above, the impugned order dated 22.09.2009 is set aside to the extent the Central Information Commission appointed an ‘enquiry committee’ when it was incumbent upon the Commission to conduct the inquiry itself. It is also set aside to the extent that it draws an adverse inference with regard to the absence of the Vice-Chairman, DDA in one of its sittings. The impugned Regulations are quashed as being *ultra vires* the Right to Information Act, 2005. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

May 21, 2010

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